

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1199

Introduced by Bourne, 8

Read first time January 18, 2002

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Unfair Insurance Claims Settlement
2 Practices Act; to amend sections 44-1538 and 44-1540,
3 Reissue Revised Statutes of Nebraska; to provide
4 requirements relating to appraisals of motor vehicles; to
5 define terms; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-1538, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-1538. (1) For purposes of the Unfair Insurance Claims
4 Settlement Practices Act:

5 (a) Appraiser shall mean a person who performs with such
6 frequency as to indicate a general business practice the process of
7 appraising or estimating the cost to repair or specifying
8 procedures to repair physical damage to motor vehicles for the
9 purpose of settling claims arising under a policy;

10 (b) Auditor shall mean a person who performs with such
11 frequency as to indicate a general business practice the process of
12 either appraising, estimating, reviewing, or adjusting the cost or
13 specifying procedures to repair physical damage to motor vehicles
14 for the purpose of settling claims arising under a policy;

15 (c) Director shall mean the Director of Insurance;

16 ~~(b)~~ (d) Insured shall mean the party named on a policy or
17 certificate as the individual with legal rights to the benefits
18 provided by such policy or certificate;

19 ~~(e)~~ (e) Insurer shall mean any person, reciprocal
20 exchange, interinsurer, Lloyds-type insurer or other similar group
21 which includes incorporated and individual unincorporated
22 underwriters, fraternal benefit society, and other legal entity
23 engaged in the business of insurance, including agents, brokers,
24 insurance consultants, adjusters, and third-party administrators.
25 Insurer shall also mean health maintenance organizations, prepaid
26 limited health service organizations, and dental, optometric, and
27 other similar health service plans. For purposes of the act, all
28 such insurers shall be deemed to be engaged in the business of

1 insurance;

2 ~~(d)~~ (f) Person shall mean any natural or artificial
3 entity, including, but not limited to, an individual, partnership,
4 limited liability company, association, trust, or corporation; and

5 ~~(e)~~ (g) Policy or certificate shall include any contract
6 of insurance, indemnity, or annuity issued, proposed for issuance,
7 or intended for issuance by any insurer. Policy or certificate
8 shall not include contracts of workers' compensation, fidelity,
9 suretyship, or boiler and machinery insurance.

10 (2) The purpose of the definitions in this section is to
11 include within the act and any rules and regulations adopted
12 pursuant to the act all entities and activities to the extent not
13 preempted by the federal Employee Retirement Income Security Act of
14 1974, as amended.

15 Sec. 2. Section 44-1540, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-1540. Any of the following acts or practices by an
18 insurer, if committed in violation of section 44-1539, shall be an
19 unfair claims settlement practice:

20 (1) Knowingly misrepresenting to claimants and insureds
21 relevant facts or policy provisions relating to coverages at issue;

22 (2) Failing to acknowledge with reasonable promptness
23 pertinent communications with respect to claims arising under its
24 policies;

25 (3) Failing to adopt and implement reasonable standards
26 for the prompt investigation and settlement of claims arising under
27 its policies;

28 (4) Not attempting in good faith to effectuate prompt,

1 fair, and equitable settlement of claims submitted in which
2 liability has become reasonably clear;

3 (5) Not attempting in good faith to effectuate prompt,
4 fair, and equitable settlement of property and casualty claims in
5 which coverage and the amount of the loss are reasonably clear;

6 (6) Compelling insureds or beneficiaries to institute
7 litigation to recover amounts due under its policies by offering
8 substantially less than the amounts ultimately recovered in
9 litigation brought by them;

10 (7) Refusing to pay claims without conducting a
11 reasonable investigation;

12 (8) Failing to affirm or deny coverage of a claim within
13 a reasonable time after having completed its investigation related
14 to such claim;

15 (9) Attempting to settle a claim for less than the amount
16 to which a reasonable person would believe the insured or
17 beneficiary was entitled by reference to written or printed
18 advertising material accompanying or made part of an application;

19 (10) Attempting to settle claims on the basis of an
20 application which was materially altered without notice to or
21 knowledge or consent of the insured;

22 (11) Making a claims payment to an insured or beneficiary
23 without indicating the coverage under which each payment is being
24 made;

25 (12) Unreasonably delaying the investigation or payment
26 of claims by requiring both a formal proof-of-loss form and
27 subsequent verification that would result in duplication of
28 information and verification appearing in the formal proof-of-loss

1 form;

2 (13) Failing, in the case of the denial of a claim or the
3 offer of a compromise settlement, to promptly provide a reasonable
4 and accurate explanation of the basis for such action;

5 (14) Failing to provide forms necessary to present claims
6 with reasonable explanations regarding their use within fifteen
7 working days of a request;

8 (15) Failing to adopt and implement reasonable standards
9 to assure that the repairs of a repairer owned by or affiliated
10 with the insurer are performed in a skillful manner. For purposes
11 of this subdivision, a repairer is affiliated with the insurer if
12 there is a preexisting arrangement, understanding, agreement, or
13 contract between the insurer and repairer for services in
14 connection with claims on policies issued by the insurer; ~~and~~

15 (16) Requiring the insured or claimant to use a
16 particular company or location for motor vehicle repair. Nothing
17 in this subdivision shall prohibit an insurer from entering into
18 discount agreements with companies and locations for motor vehicle
19 repair or otherwise entering into any business arrangements or
20 affiliations which reduce the cost of motor vehicle repair if the
21 insured or claimant has the right to use a particular company or
22 reasonably available location for motor vehicle repair. If the
23 insured or claimant chooses to use a particular company or location
24 other than the one providing the lowest estimate for like kind and
25 quality motor vehicle repair, the insurer shall not be liable for
26 any cost exceeding the lowest estimate. For purposes of this
27 subdivision, motor vehicle repair shall include motor vehicle glass
28 replacement and motor vehicle glass repair; and

1 (17) Making an appraisal, audit, or estimate for the cost
2 or procedures necessary to repair a motor vehicle that has
3 sustained physical damage unless the appraisal, audit, or estimate
4 is based upon the personal inspection by the appraiser or auditor.

5 Sec. 3. Original sections 44-1538 and 44-1540, Reissue
6 Revised Statutes of Nebraska, are repealed.